

1 **Mark Antoine Foster, In Pro Per**
2 **200 Corpus Cristie Road #A**
3 **Alameda, California 94502**
4 **(415) 756-1611**
5 **(619) 646-3564**

FILED
APR 17 PM 2:22
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6
7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 **MARK ANTOINE FOSTER,**
13 **Plaintiff,**

14 **vs.**

15 **MORGAN LEWIS & BOKIUS and**
16 **ERIC MECKLEY, as an individual**
17 **and does 1 through 81**

18 **Defendants**

Case No. **C-08- 01337 MHP**
DECLARATION OF MARK
ANTOINE FOSTER IN SUPPORT
THEREOF AND EXHIBIT "A" THRU
'B" ATTACHED THERETO

Date: April 28, 2008
Time: 2:00 p.m.

19 **I MARK ANTOINE FOSTER declare that:**

- 20 1. I am the plaintiff in this action and have personal knowledge of each fact stated in
21 the complaint filed against Morgan Lewis & Bokius, and Eric Meckley, an
22 individual, a parties to this action.
- 23 2. Attached hereto as Exhibit "A" and incorporated herein by reference is a true and
24 correct copy of the correspondence between Foster and his worker's

25 **DECLARATION OF MARK ANTOINE FOSTER**

C- 08-1337 MHP

1 compensation Attorney Mary Lou Williams, evidencing the state of minds as to
2 the suspiciousness of the new VRA presented on or around May 1, 2007

3 3. Attached hereto as Exhibit "B" and incorporated herein by reference is a true and
4 correct copy of Plaintiff's lawsuit against The Law Office Of Gray and Prouty

5 I declare under penalty under the laws of the state of California that the foregoing is true
6 and correct and that this declaration was executed this day on the 15th of April 2008, at
7 San Francisco, California

8 
Mark Antoine Foster, In Pro Per

EXHIBIT "A"

Mary-Lou Williams
4104 - 24th Street, #438
San Francisco, CA 94114
(415) 986-4585
FAX: (415) 826-2132
lou@lou-williams.com

May 4, 2007

Mark Antoine Foster
725 Ellis Street, #408
San Francisco, CA 94109

Re: Mark A. Foster v. Aramark, SRS
WCAB Number: SFO 0496875
Claim number: 300231324
Date of injury: 3/28/06
AGREED MEDICAL EVALUATION APPOINTMENT: 6/13/07; 9 a.m.

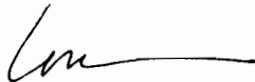
Dear Mark:

I have enclosed herewith for your signature the C+R document and addenda. Also, I left a copy of Lett's letter attached, for your information only. You can tear it off and keep it. I have put a purple X by every line that needs your signature, or other writing. We have discussed the 'voluntary resignation.' As of this writing, I have not ascertained that it will not scuttle the settlement to change the date, but I cannot imagine why it would; so just put a line through the date that is there, write in the correct date, initial it, and sign the document.

On the main document, you will see two lines for witnesses. You need to get two people, not your family members, to watch you sign, and then sign on these two lines—just so you'll know: at the Board where these agreements are signed all day long, I and every other lawyer down there has witnessed many hundreds of these—it is not a big deal to the people who sign, but the signatures are essential. Please also initial the attorney fee line on page 2.

I have included a self-addressed stamped envelope for you to return the document to me. Thanks a lot. Please call if you have any questions.

Very truly yours,



Mary-Lou Williams

Encl.

Mary-Lou Williams
Law Office of Mary-Lou Williams
4104 - 24th Street, #438

San Francisco, CA 94114
(415) 986-4585
Attorney for Petitioner

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION APPEALS BOARD

(PRINT OR TYPE NAMES AND ADDRESSES)

Foster, Mark Antoine
Name of Injured Workers
3/28/06

Date of Claimed Injury
725 Ellis Street, #408
San Francisco, CA 94109
Address

302 56 8205
Social Security Number

Aramark
Name of Employer
555 California St.
San Francisco, CA
Address
Specialty Risk

Name of Insurance Carrier/Adjusting Agency
P.O. Box 591
Burbank, CA 91503
Address

Mary-Lou Williams
Petitioner
4104 - 24th Street, #438
San Francisco, CA 94114
Address

☒ worker ☐ employer ☐ carrier
☐ other

FOR WCAB USE ONLY

WCAB CASE NUMBER
(IF APPLICATION HAS BEEN FILED)
SFO 0496875

PETITION FOR

- ☐ Benefits Under Labor Code section 132a
☐ Benefits Under Labor Code section 4553
☐ Penalty Under Labor Code section 5814
☒ Other

Penalty Under Labor Code section
5813

RECEIVED
State of California

JUN 27 2007

Division of
Workers' Compensation
District Office
San Francisco

PETITIONER ALLEGES AS FOLLOWS:

The parties had reached an agreement to settle this psychological injury claim with a *Thomas* finding, and the settlement document was returned to defendant on May 9, 2007. Defendant induced cancellation of the AME appointment set for June 13, 2007, in reliance upon the settlement going forward, setting an even longer delay in motion. The defendant purports to hold up the settlement because the 'voluntary resignation' form served with the C+R document was altered by applicant to reflect an earlier date. The settlement was entered into by applicant based upon his reasonable expectation it would be processed in a timely manner, but this defendant (Aramark, not SRS) has inexplicably, if not maliciously, held up the process. Accordingly, applicant requests the imposition of penalty and sanctions.

(PROOF OF SERVICE MUST BE ATTACHED)

EXHIBIT "B"

1 Mark Antoine Foster, In Pro Per
2 200 Corpus Cristie Road #A
3 Alameda, CA 94502
4 (415) 756-1611
5
6
7

8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN FRANCISCO
10 CIVIL UNLIMITED JURISDICTION

11
12 MARK ANTOINE FOSTER,

13 Plaintiff,

14 vs.

15 LAW OFFICES OF GRAY AND PROUTY
16 AND C. KEMPTON LETTS, DANA
17 MITCHELL, as individuals, and DOES 1 through
18 81
19 Defendants

**COMPLAINT FOR DAMAGES FOR
CIVIL RIGHTS (related to
Employment discrimination)**

1. Fraud and Intentional Deceit
2. Intentional Misrepresentation of Fact
3. Negligent Misrepresentation
4. Suppression of Fact
5. Breach of Fiduciary Duty
6. Intentional Infliction of Emotional Distress
7. Negligent Infliction of Emotional Distress

20 INTRODUCTION

21 This case is brought against defendants pursuant to
22 California Codes of Civil Procedure §1709, §1710 and §1572 for
23 committing acts that constitute fraud and intentional deceit.
24 Defendant Law Firm GRAY AND PROUTY and its employee attorneys
25

1 C.Kempton Letts and Dana Mitchell conspired with their clients
2 Aramark Sports, L.L.C. and Specialty Risk Services to defraud
3 plaintiff of his disability discrimination claim against their
4 clients. The acts were committed to shield their clients from a
5 "would be" claim of disability discrimination claim and deprive
6 plaintiff of any monetary damages that would be awarded to
7 plaintiff as a result. Defendant's acts were related to
8 plaintiff's previous employment with Aramark, as defendants
9 committed these acts after plaintiff's employment with Aramark
10 ended.

11 Although the acts were committed after plaintiff's
12 employment ended, the acts were connected to claims plaintiff
13 alleged in a previous complaint plaintiff filed against Aramark
14 in San Francisco Superior Court on March 9, 2007. These acts
15 show a continuing pattern of further deprivation of plaintiff's
16 civil rights by defendants' client Aramark.

17 The connected case number 07461178, which alleges acts that
18 were committed by Aramark while plaintiff was employed with
19 Aramark has been presently removed to federal court by Aramark
20 on January 30, 2008 which plaintiff's believes is an attempt to
21 delay trial and prosecution of the case in state court.

22 Aramark stated to the court in their case management
23 conference statement that they would file a motion for summary
24 judgment or as an alternative a motion for summary adjudication
25

1 but instead, upon discovering that plaintiff has acquired enough
2 evidence to support his claims through his own discovery plan,
3 Aramark removed the case to federal court in an attempt to
4 divert plaintiff and gather their thoughts as to how they want
5 and should settle the case.

6 Plaintiff will also file a second amended complaint adding
7 claims alleging Wrongful Termination, additional retaliation
8 that resulted in Fraud and Intentional Deceit, Suppression of
9 Fact, and to change quid pro quo sexual harassment to hostile
10 work environment sexual harassment.

11 Plaintiff will also file a supplemental complaint alleging
12 continued retaliation after plaintiff filed his complaint on
13 March 9, 2007.

14 PARTIES

15 1. Plaintiff Mark Antoine Foster was an employee of
16 defendant Gray and Prouty's client Aramark Sports and
17 Entertainment, a subsidiary of Aramark Corporation. He worked
18 for the Carnelian Room located at 555 California Street, San
19 Francisco, California.

20 2. Defendants does 1 through 57, inclusive, are sued
21 under fictitious names. Their true names and capacities are
22 unknown to plaintiff. When their true names and capacities are
23 ascertained, plaintiff will amend this complaint by inserting
24 their true names and capacities herein. Plaintiff is informed
25 and believes and thereon alleges that each of the fictitiously

1 named defendants is responsible in some manner for the
2 occurrences herein alleged, and such defendants caused plaintiff
3 damages as herein alleged.

4 3. Plaintiff is informed and believes, and thereon
5 alleges, that at all times herein mentioned each and every
6 defendant was the agent, servant, employee and/or representative
7 of each other defendant and was, in doing the things complained
8 of herein, acting within the scope of said agency, service,
9 employment and or representation, and that each and every
10 defendant herein is jointly and severally responsible and liable
11 to plaintiff for the damages hereinafter alleged.

12 JURISDICTION AND VENUE

13 4. Jurisdiction is proper in this court as the acts
14 complained of occurred in San Francisco,
15 California.

16 5. The amount in controversy exceeds limited
17 jurisdiction.

18 6. Plaintiff timely files this complaint, as he
19 discovered the fraudulent acts of the defendants in
20 December 2007.

21 7. Plaintiff will amend this complaint to allege those
22 causes of action once defendants respond to the claim.

23 FIRST CAUSE OF ACTION
24 FRAUD AND INTENTIONAL DECEIT
(California Civil Codes 1709, 1710 and 1572)

FIRST COUNT
INTENTIONAL MISREPRESENTATION OF FACT

8. Plaintiff realleges and incorporates herein by reference every allegation stated herein.

9. Plaintiff is informed, believes and therefore alleges that the defendants' acts constituted fraud and intentional deceit due to the defendants attempting to help their client cover-up a possible or "would-be" disability discrimination claim from plaintiff, in the event plaintiff discovered that defendants discriminated against due to his disability.

10. On or around March 28, 2006, plaintiff requested a medical leave from Aramark due to work related stress allegedly caused by two of the Aramarks' supervisor/managers. On or around March 28, 2006, plaintiff signed an voluntary resignation agreement stating he would return no later than June 15, 2006 and that if he did not return by June 15, 2006, his absence would be considered a voluntary quit and he will be terminated on that day.

11. On or around June 15, 2006, plaintiff did not return to work due to (1) still being disabled and (2) due to fear of further retaliation from defendants, and (3) due to fear of being terminated once he did return to work for Aramark.

12. Plaintiff is informed, believes and therefore alleges that he was forced to resign on June 15, 2006, pursuant to the voluntary resignation agreement he signed on March 28, 2006,

1 absent Aramark offering plaintiff a further reasonable
2 accommodation to his disability before allowing him to
3 "voluntarily quit", as voluntary quit in this case is voluntary
4 termination, which results in its simple form - termination of
5 employment.

6 13. On or around March 9, 2007, plaintiff filed a
7 complaint against defendants Aramark Sports, LLC, and Ying Kee
8 McVicker and Mathew Lee as individuals, alleging Retaliation,
9 Harassment, Constructive Discharge, Failure to Prevent
10 Harassment, and Intentional Infliction of Emotional Distress.
11 Plaintiff did not allege Disability Discrimination due to not
12 knowing his was or had been subject to disability Discrimination
13 at that point in time. Plaintiff discovered in January 2008 that
14 he had been subject to disability discrimination on June 15,
15 2006.

16 14. Plaintiff alleges that sometime in Feb. 2007, before
17 filing his complaint on March 9, 2007, he requested his employee
18 records from Aramark, specifically Aramark's HR Manager, James
19 Chan. Mr. Chan released plaintiff's employee records which
20 contained a copy of the voluntary resignation agreement dated
21 March 28, 2006 plaintiff signed agreeing to return on June 15
22 2006. On the Face of the Voluntary Resignation Agreement was a
23 notation made by James Chan stating that he communicated with
24 the Executive Chef regarding plaintiff not returning to work on
25

1 June 15, 2006. Plaintiff alleges that this is evidence that he
2 was terminated pursuant to the voluntary resignation agreement,
3 in addition to the fact that the mere existence of the voluntary
4 resignation agreement shows plaintiff was more than likely
5 terminated pursuant to it.

6 15. On or around August 28, 2007, plaintiff served Aramark
7 a request for documents demanding all documents relevant to his
8 termination; instead of Aramark producing the same documents he
9 received from James Chan before he filed his lawsuit, defendants
10 presented another version of the voluntary resignation without
11 the notation of James Chan on the face of the agreement. This
12 shows defendants withheld evidence.

13 16. On or around December 20, 2007, plaintiff realized
14 through research that he had been subject to Disability
15 Discrimination and in December 2007, filed a motion to amend his
16 complaint to add Disability Discrimination under the ADA, UNRUH
17 and FEHA. Defendants stipulated with plaintiff to allow the
18 amendment.

19 17. On or Around Jan 15, 2008, Plaintiff discovered
20 through his Discovery served on Aramark that he was defrauded by
21 defendants, as defendants conspired with their clients to help
22 cover up or attempt to cover-up the fact that Aramark had
23 discriminated against plaintiff due to his mental disability,
24 and had also wrongfully terminated him due to Aramark not
25

1 following union rules prior to terminating Plaintiff.

2 18. On or around May 2, 2007, defendants with their client
3 Aramark, (and Plaintiff believes also believes their client's
4 Employment Law Attorneys Morgan and Lewis), requested from
5 plaintiff that he agree and sign a document stating that he
6 voluntarily resigned on May 1, 2007. The purpose for defendants'
7 request was to use the proposed agreement to void out the
8 agreement Plaintiff signed on March 28, 2006, as the March 28,
9 2006 agreement is the initial and actual reason why plaintiff
10 was terminated; as plaintiff was forced to resign on June 15,
11 2006 pursuant to the March 28, 2006 agreement, which in turn
12 caused Aramark's disability discrimination against Plaintiff, as
13 he was still disabled on June 15, 2006. Plaintiff alleges he was
14 also wrongfully terminated because Aramark did not follow
15 mandatory union procedures prior to terminating him, as
16 Plaintiff was a union member and his March 28, 2006 agreement
17 was a union connected agreement subject to union rules.

18 19. Defendants and their client Aramark presented the new
19 agreement to plaintiff for his signature, knowing what its
20 purpose was to cover-up the March 28, 2006 agreement. Plaintiff
21 then refused to agree that he resigned on May 1, 2007, knowing
22 that he resigned on June 15, 2006, pursuant to the agreement
23 signed on March 28, 2006.

24 20. Defendants insisted that plaintiff sign the agreement
25

1 prior to releasing his already agreed upon Worker's Compensation
2 settlement of \$5,500. Plaintiff altered the date and signed the
3 agreement as voluntarily resigning on June 15, 2006, not May 1,
4 2007 as Defendants requested he do. Although plaintiff did not
5 sign the agreement as voluntarily resigning on May 1, 2007, he
6 did sign agreeing that he *voluntarily resigned* on June 15, 2006.
7 Even though defendants were not successful in getting plaintiff
8 to agree that he resigned on May 1, 2007, they planned to use
9 the agreement anyway to void out the original agreement signed
10 on March 28, 2006. Defendants planned to use the new agreement
11 to say that plaintiff resigned on June 15, 2006, to give the
12 impression that he voluntarily resigned on his own on June 15,
13 2006, and not pursuant to the agreement he signed on March 28,
14 2006, to shield themselves from disability discrimination.
15 Although the mere existence of any voluntary agreement Plaintiff
16 signed in May 2007, or anytime thereafter, is a fraud, because
17 there was no need for any new agreement because Plaintiff's
18 employment had ended over a year prior to May 2007, as his last
19 day at work was March 28, 2006, and his official termination was
20 on June 15, 2006, approximately eleven months prior to May 2007.

21 21. Plaintiff is informed believes and therefore alleges
22 that the defendants made a false representation offering the
23 voluntary resignation agreement. The true facts being; Aramark
24 forced plaintiff to resign pursuant to the voluntary resignation
25

1 agreement he signed on March 28, 2006, as Aramark disregarded
2 Plaintiff's "known" mental disability, and defendants and
3 Aramark knew the March 28, 2006 agreement did not preempt state
4 and federal laws regarding disability discrimination and that
5 terminating Plaintiff pursuant to it without offering him a
6 further reasonable accommodation was wrong, and Defendants and
7 Aramark were attempting to suppress this material fact.
8 Defendants, requesting plaintiff to sign the agreement presented
9 on May 2, 2007 was FRAUD in its purest Form. Defendants abused
10 their position of attorneys and knew holding back Plaintiff's
11 already "mutually" agreed upon settlement to coerce plaintiff to
12 sign the agreement, was to trick plaintiff into defrauding his
13 own self. Plaintiff signed the agreement and returned it, as
14 this proves that the FRAUD reached its full Fruition or
15 Justifiable reliance, damaging plaintiff even further.

16 22. Plaintiff alleges that it was a misrepresentation of
17 Material Fact by Defendants to request plaintiff to agree and
18 sign an agreement stating that his voluntary resignation was on
19 a date after he had already voluntarily resigned in an attempt
20 to cover up a possible disability discrimination claim against
21 their clients.

22 23. Defendants attempt to use the document to void out his
23 original resignation agreement signed on March 28, 2006 was
24 despicable conduct done with malice. Defendants attempted to
25

1 help their clients defraud Plaintiff of his rightful claim of
2 disability discrimination and the tangible and intangible
3 benefits representing monetary and other remedy for damages that
4 could be awarded due to the disability claim. This act is
5 clearly an intentional misrepresentation of Material Fact.

6 24. When the Defendants made the representations, they
7 knew then to be false or were based on false pretenses or
8 misrepresentations, as the defendants made these representations
9 with the intention to deceive and defraud plaintiff and to
10 induce plaintiff to act in reliance on these representations in
11 the manner alleged, or with the expectation that plaintiff would
12 so act. Defendants expected plaintiff to sign the agreement so
13 he could receive his WC Settlement of \$5,500 and coerced him to
14 sign the agreement before agreeing to release payment of the
15 \$5,500 to him.

16 25. Plaintiff at the time these representations were made
17 by Defendants, believed that the Defendants representations were
18 true. Due to believing, plaintiff thought it was acceptable or
19 all right to sign the document, and that it was not depriving
20 him of any further rights and that there was a legal forthright
21 reason for defendants requesting him to sign the voluntary
22 agreement. Plaintiff reasonably thought when he altered the date
23 to reflect June 15, 2006, and signed the agreement as such, he
24 was just confirming he resigned on June 15, 2006 pursuant to the
25

1 agreement he signed on March 28, 2006. Plaintiff did not know at
2 that time what Aramark was planning to use the new agreement
3 for, which was to cover-up the March 28, 2006 agreement; because
4 he did not know at that time he had been subject to a wrongful
5 termination and disability discrimination. Aramark, had the
6 defendants use their positions as attorneys to help present the
7 document as if it was legal when actually it was not, as this
8 shows that plaintiff's reliance on defendant representation was
9 justified, as he trusted the Defendants as attorneys, at the
10 least not to help their client defraud him.

11 26. Plaintiff alleges that he has satisfied all the
12 elements for intentional misrepresentations, which includes: (1)
13 misrepresentations (2) Material Fact (3) Knowledge of Falsity
14 (4) Intent to induce reliance (5) Justifiable reliance and (6)
15 Causation and Damages

16 27. Defendants attempt to defraud Plaintiff violated
17 California Civil Codes §1709, §1710, and §1572

18 28. As a proximate result of the fraudulent conduct or the
19 defendants as herein alleged, plaintiff was subjected to Fraud
20 and Intentional Deceit that subject or caused him emotional
21 distress and mental anguish.

22 29. The aforementioned conduct of defendants was an
23 intentional misrepresentation, deceit, or concealment of a
24 material fact know to the defendants with the intention on the
25

1 part of the defendants to deprive the plaintiff of property or
2 legal rights, causing injury, and was despicable conduct that
3 subjected plaintiff to a cruel unjust hardship in conscious
4 disregard of the plaintiff's rights, so as to justify an award
5 of exemplary and punitive damages.

6 **SECOND COUNT**

7 **Negligent Misrepresentation**

8 30. When the defendants made the representation they had
9 no reasonable grounds for believing them to be true. Defendants
10 knew that (1) it was not necessary for Plaintiff to sign the
11 Agreement at all (2) it was not necessary for plaintiff to sign
12 the agreement as a condition to him receiving or defendants
13 releasing plaintiff's already agreed upon worker's compensation
14 settlement of \$5,500.

15 31. Plaintiff alleges that the defendants made the
16 representation with intent to induce plaintiff to rely upon it.

17 32. Plaintiff alleges that he was unaware of the falsity
18 of the representation; in that he did not know that the purpose
19 or the agreement was to shield Aramark from a possible
20 discrimination disability claim from plaintiff, depriving
21 plaintiff of any possible monetary damages from the claim.

22 33. Plaintiff alleges that he acted in reliance upon the
23 truth of the representation; as in him thinking it was necessary
24 to sign the agreement, as he believed it to be safe or true

1 because it was presented to him by Aramark's Worker's
2 Compensation attorneys Gray and Prouty. Plaintiff believed it to
3 be true because he knew the Defendants knew exactly when he
4 actually resigned and knew Plaintiff was forced to resign on
5 June 15, 2006 pursuant to the March 28, 2006 agreement.
6 Defendants knew because Plaintiff was forced to resign pursuant
7 to the March 28, 2006 agreement, it proved their client Aramark
8 subjected Plaintiff to disability discrimination and a wrongful
9 termination.

10 34. Defendants initiating these actions in an attempt to
11 help DEFRAUD plaintiff of his claim of disability discrimination
12 and any possible monetary damages that would be awarded in lieu
13 of the disability discrimination claim violating California
14 Codes §1572, §1709 and §1710, Therefore Plaintiff is entitled to
15 Statutory Damages, Costs and awards of Attorney Fees.

16 **THIRD COUNT**

17 **Suppression of Fact**

18 35. Plaintiff alleges that defendants suppressed the fact
19 that if was not necessary for plaintiff to agree and sign the
20 voluntary resignation agreement to receive his worker's
21 compensation settlement of \$5,500.

22 36. In addition on or around July 2, 2007, defendant
23 employee Attorney Dana Mitchell filed an opposition to
24 plaintiff's Readiness to Proceed. In the opposition, Defendants
25

1 state or implied that the reason plaintiff's settlement of
2 \$5,500 had not been paid was due to plaintiff filing an EEOC
3 Claim subsequent to agreeing to the settlement of \$5,500 with
4 defendants. Plaintiff believes that defendants lied to the
5 Worker's Compensation Appeals Board to create a "Smoke screen"
6 or cover up as to the actual reason plaintiff's settlement was
7 held up, which was defendants wanting to force plaintiff to sign
8 the agreement to shield them from the disability discrimination
9 claim. Defendants concealed from the Worker's Compensation
10 Appeals Board that there was no EEOC Claim filed by plaintiff
11 subsequent to the agreement of the worker's compensation
12 Settlement.

13 37. The defendants made the failure to disclose and
14 suppressed and/or concealed the information mentioned herein
15 alleged, with the intent to induce the plaintiff to act in the
16 manner herein alleged in reliance thereupon, with the intent to
17 cause plaintiff to sign the agreement.

18 38. As a proximate result of the fraudulent conduct or the
19 defendants as herein alleged, plaintiff was subjected to Fraud
20 and Intentional Deceit that subject or caused him emotional
21 distress and mental anguish.

22 39. The aforementioned conduct of defendants was an
23 intentional misrepresentation, deceit, or concealment of a
24 material fact know to the defendants with the intention on the
25

1 part of the defendants of to deprive the plaintiff of property
2 or legal rights, causing injury, and was despicable conduct that
3 subjected plaintiff to a cruel unjust hardship in conscious
4 disregard of the plaintiff's rights, so as to justify an award
5 of exemplary and punitive damages.

6 40. Defendants' attempt to defraud plaintiff violated
7 section 1572 of the California Civil Code. Plaintiff is
8 therefore entitled to Statutory Damages, Costs and award of
9 Attorney fees.

10 Wherefore Plaintiff prays for judgment against Defendants
11 as more fully set forth below, as more fully set forth below.

12 **SECOND CAUSE OF ACTION**

13 **BREACH OF FUDICIARY DUTY**

14 41. Plaintiff realleges and incorporates therein by
15 reference every allegation stated herein.

16 42. Defendants, as attorneys, breached their fudiciary
17 duty, as attorneys, they were negligent in their duties and
18 behaved in a way that was despicable due to them being attorneys
19 having a duty of care to uphold the law, knowing they were
20 helping break the law. Defendants knew the acts being committed
21 were being done for fraudulent reasons and still allowed
22 themselves to conspire with their clients to help defraud
23 plaintiff. Defendants recognized the risks created by their
24 actions and Aramark actions and understood what could happen
25

1 from those risks taken.

2 43. Plaintiff alleges that defendants knew all details
3 regarding plaintiff's employment with their client Aramark,
4 including knowing when plaintiff actually resigned and why.
5 Defendants knew requesting and coercing plaintiff to sign the
6 agreement presented on May 2, 2007 was to void out the original
7 agreement plaintiff signed on March 28, 2006 to help shield
8 their client Aramark from a possible discrimination claim from
9 plaintiff.

10 44. Plaintiff alleges that professional attorneys are held
11 to a higher standard of care than an ordinary reasonable person
12 would be. Attorneys must behave as a reasonable attorney would
13 do so rather than a reasonable person. The perspective of an
14 attorney would be different matters in the court. Defendant Gray
15 and Prouty and their employee attorneys defendants C.Kempton
16 Letts and Dana Mitchell, owe plaintiff a reasonable standard of
17 care.

18 45. Plaintiff alleges that the defendants' acts breached
19 their fiduciary duty violating section 3300 of the California
20 Civil Code.

21 46. As a direct and proximate result of said breach,
22 plaintiff has suffered the actual and special and general
23 damages as alleged, and which are incorporated herein by this
24 reference, and seek recovery of the same, and for an award of

1 costs and reasonable attorney fees.

2 47. As a proximate result of the fraudulent conduct or the
3 defendants as herein alleged, Plaintiff was subjected to Fraud
4 and Intentional Deceit, causing plaintiff emotional stress.

5 48. Plaintiff alleges that the defendants' breach was
6 committed to defraud plaintiff and was in conscious disregard of
7 plaintiff's rights and was willful, oppressive and malicious;
8 and designed to cause plaintiff to suffer economic and emotional
9 injury. Plaintiff is therefore entitled to an award of exemplary
10 and punitive damages against defendants, in an amount to be
11 determined at trial.

12 Wherefore Plaintiff prays for judgment against Defendants
13 as more fully set forth below.

14 **THIRD CAUSE OF ACTION**

15 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

16 49. Plaintiff realleges and incorporates therein by
17 reference every allegation stated herein.

18 50. The fraudulent actions of defendants were outrageous,
19 intentional and malicious and done with reckless disregard of
20 the fact that they would certainly cause plaintiff to suffer
21 severe emotional and physical distress. Defendants knew that
22 defrauding plaintiff in an attempt to deprive from his "would
23 be" Disability Discrimination Claim would certainly cause him to
24 suffer severe emotional and physical distress. Defendants also

1 knew Plaintiff had already suffered psychological injury due to
2 the previous acts of the Aramark while Plaintiff was employed at
3 the Carnelian Room, but still proceeded with their Fraudulent
4 acts after Plaintiff resigned or was constructively Discharged.

5 51. As a proximate result of the acts of defendants,
6 Plaintiff has and will more than likely continue to suffer
7 emotional distress in the form of fear, anxiety, worry, and
8 mental suffering as the injury will have an effect on
9 Plaintiff's future capacity to work and earn income.

10 52. Plaintiff will seek more psychological counseling as a
11 result of the defendants conduct.

12 53. As a proximate result of Defendants conduct, Plaintiff
13 has suffered general Damages in an amount to be determined by
14 Proof at Trial.

15 54. Defendants conduct was done knowingly, willfully and
16 with malicious intent and Plaintiff can prove the fraudulent
17 acts of Defendants by "clear and convincing" evidences and
18 therefore Plaintiff is entitled o Punitive Damages in an amount
19 to be determined by Proof at trial.

20 Wherefore Plaintiff prays for judgment against Defendants
21 as more fully set forth below.

22 **FOURTH OF ACTION**

23 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

24 55. Plaintiff realleges and incorporates therein by
25

1 reference every allegation stated herein.

2 56. Plaintiff is informed, believes and therefore alleges
3 that Defendant Gray and Prouty is negligent in causing plaintiff
4 Emotional Distress, in that Defendant Gray and Prouty has
5 breached their duty of care by allowing themselves as attorneys
6 and their client Aramark to intentionally inflict Plaintiff with
7 Emotional Distress causing Plaintiff injury resulting in
8 damages. Defendants' negligence causing of Emotional Distress is
9 not an independent Tort: it is a Tort of Negligence.

10 57. As a proximate result of the fraudulent conduct of the
11 defendants as herein alleged, plaintiff was injured emotionally
12 and mentally suffering damage

13 Wherefore Plaintiff prays for judgment against Defendants
14 as more fully set forth below.

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff FOSTER prays for judgment against
17 defendants, and each of them, as more fully set forth below:

- 18 1. For general damages, including emotional distress,
19 according to proof;
- 20 2. For statutory penalties and all relief allowed by
21 statute according to proof;
- 22 3. For punitive damages;
- 23 4. For an award of attorney's fees;
- 24 5. For pre-judgment interest at the legal rate according to
25

1 proof;

2 6. For costs of suit incurred;

3 7. For such other and further relief as the court may deem
4 proper.

5 Dated:

6 Mark Antoine Foster, In Pro Per

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